

SOUTHERN DISTRICT OF NEW YORK

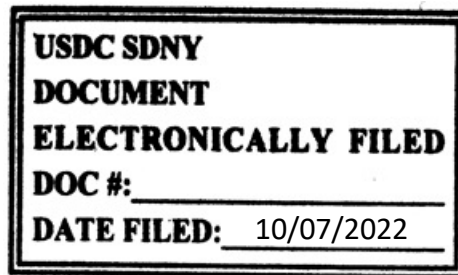
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BENTHOS MASTER FUND, LTD,

Petitioner,

-against-

AARON ETRA,

Respondent.
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ORDER

20-CV-3384 (VEC) (KHP)

KATHARINE H. PARKER, UNITED STATES MAGISTRATE JUDGE.

On August 3, 2022, the Court scheduled an in-person Evidentiary Hearing to determine whether Respondent has “control,” for purposes of Federal Rule of Civil Procedure 34(a), over monthly statements from two foreign bank accounts at Uni-Credit and Sberbank, over a certain time period. On October 4, 2022, Respondent asked to cancel the Hearing because he claimed he already provided documents purporting to establish that he lacks control, and because the Hearing was scheduled during the Jewish High Holiday period. The Court denied the request in light of the fact Petitioner sought to present evidence at the Hearing, and because the Hearing was not scheduled on a Jewish Holiday.

On October 6, 2022 – the morning of the hearing – Respondent informed the Court that he “woke up . . . shivering, sneezing and coughing,” and stated he could try to participate in the Hearing remotely. The Court converted the Hearing to a remote Teams conference. Respondent joined the conference at the scheduled time. He was coughing and stated he was not feeling well and could not appear via video. Petitioner stated that Respondent has consistently used his health as an excuse to avoid conferences while at the same time traveling to Europe, casting doubt on Respondent’s claims. Out of an abundance of caution that

Respondent would not be able to meaningfully participate in the Hearing, the Court adjourned the Hearing.

By **Thursday October 13, 2022**, Petitioner shall file to ECF a doctors' note stating that he was in fact unable to participate in the Evidentiary Hearing due to health reasons. The doctor's note may be filed under seal. In the event Respondent does not file on ECF a doctor's note confirming he was in fact experiencing health problems on the day in question, the Court may issue sanctions against Respondent for making misrepresentations to the Court. The Court reminds Plaintiff that all filings must be done through the pro se office and that he is not permitted to email Chambers.

The Evidentiary Hearing is rescheduled for **November 9, 2022 at 2:30 p.m.** in Courtroom 17-D, United States Courthouse, 500 Pearl Street, New York NY. In the event Respondent again seeks to adjourn the Hearing due to health issues, he shall file such a request on ECF and must attach a doctor's note confirming his health issues. Absent a filing on ECF that attaches a doctor's note, no request for an adjournment of the Hearing will be considered from Respondent.


Counsel for Petitioner stated he is amenable to present evidence via briefing in lieu of a Hearing in an attempt to reach a faster resolution of the issue. Accordingly, by **Thursday, October 13, 2022**, Petitioner shall file a brief of no more than ten pages regarding the discrete issue of whether Respondent has "custody or control" over the two foreign bank accounts. Respondent may file a response of no more than 10 pages by **Thursday, October 27, 2022**. Evidence and arguments shall be cabined to the precise discovery issue at hand. Briefing must be submitted via ECF and any briefing that is emailed to the Court and not filed on ECF will not

be considered. In the event the Court is able to decide this issue on the papers alone, the Court will adjourn the Hearing via an Order on ECF.

Petitioner is directed to serve this order on Respondent by email.

SO ORDERED.

Dated: October 7, 2022
New York, New York



KATHARINE H. PARKER
United States Magistrate Judge